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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

THE TERRITORY OF NEW MEXICO,
Appellant,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD COMPANY AND THE SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY,
Appellees.

No. 182.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

BRIEF AND ARGUMENT FOR APPELLEES.

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STATEMENT.

The appellant instituted three separate actions against each of the appellees in the District Court of Grant County, New Mexico to recover certain taxes alleged to be due on account of a levy to pay certain judgments against the county, and also on account of an increase in the valuation of appellees' property,

which was contested, the balance of the taxes being paid by appellees. The cases were consolidated and submitted to the District Court upon what purported to be an "agreed statement of facts," which, however, set out at large the returns of the appellees and extracts from the records of the Board of County Commissioners and the Board of Equalization with certain exhibits showing the assessment made of the railroad property and other matters of an evidentiary nature. It was stipulated that a jury be waived and that the court might try and pass upon the issues in said cases upon said agreed statement of facts and the several exhibits thereto attached. (Transcript, page 97.)

It appeared from this statement, however, that all of the judgments for which levies were made were based upon claims against the county for general current expenses of the same, and not upon any bonded indebtedness. (See paragraph 8, page 88; paragraph 10, page 89; paragraph 12, page 90 and paragraph 21, page 94, Transcript.)

It also appears that for the years 1895, 1896 and 1897 the Board of County Commissioners made special levies for said years to pay such judgments in excess of the statutory limit of 2½ mills for county current expenses and ½ of 1 mill for deficit, defendant contending that such special levies so in excess were unauthorized and illegal. The levy for 1895 was 6.5 mills on the dollar for county purposes; 2.5 mills on the dollar for school purposes; 3.20 mills on the dollar for court fund; and 3.50 mills for payment of judgment of A. B. Laird; 6 mills for territorial purposes and 1.75 mills for ter-

ritorial institution fund; and 50/100 mills on the dollar for cattle indemnity fund. (Record, page 82.)

For 1896 the tax levy was 6-55/100 mills on the dollar for county purposes; 2½ mills for school purposes; 4-50/100 mills for judgments; 3 mills for special school precinct No. 11; 3 mills for special school precinct No. 24; 3-20/100 mills for county fund; and 8-25/100 mills for various territorial funds. (Record, page 83.)

For the year 1897 the tax levy was 16-50/100 mills for county purposes; 2½ mills for school purposes; 3-20/100 mills for court fund and 12-30/100 mills for various territorial funds; and 2-50/100 mills for public schools. (Record, pages 83 and 84.) The levy of 16-50/100 mills for county purposes in 1897 included a levy for the payment of judgments. (Record, page 92, paragraph 15; page 94, paragraph 20.)

Defendant also contested that part of the claim of the county which amounted to $276.21 on account of an increase by the Board of Equalization in the valuation of the railroad property.

On October 9, 1902, the District Court found in favor of the county and rendered judgment against appellees for $5,156.71, together with interest thereon at the rate of 6 per cent. per annum from that date and costs of suit. (Transcript, page 122.) In this amount there was embraced the claim of the county on account of increase in the valuation of the appellees' property amounting to $276.21 with interest and costs, which amount, as before stated, was contested in said District Court by appellees.

Appellees sued out a writ of error to the Supreme

Court of the territory and the latter court affirmed the judgment of the District Court to the extent of $276.21, and entered a judgment for said amount, for the reasons stated in the opinion of the court on file. (Transcript, page 127.)

From the opinion of the court it appears that the judgment of the District Court was reversed so far as involved rendering judgment against the defendant railroad companies in respect to taxes levied upon the judgments against the county. (Transcript, page 133.)

Thereupon the territory prayed an appeal to this court from the judgment of the Supreme Court of the territory, which appeal was granted by the Supreme Court of the Territory.

The Supreme Court of the territory made no findings of its own in the nature of a special verdict. The agreed statement of facts is duplicated in the record.

The record contains no assignment of errors on behalf of appellant.

The opinion of the Territorial Supreme Court is found in Record, pages 129 to 134, inclusive, and is also reported in 72 Pac. Rep., 14.

POINTS AND AUTHORITIES.

I.

AS THE AGREED STATEMENT OF FACTS DID NOT SET OUT THE ULTIMATE FACTS, BUT MERELY EVIDENTIARY MATTERS, AND AS THE TERRITORIAL SUPREME COURT MADE NO STATEMENT OF FACTS IN THE NATURE OF A SPECIAL VERDICT, THERE IS NOTHING FOR THIS COURT TO REVIEW ON APPEAL.

See Sec. 2 of the Act of April 7, 1874, 18 U. S. Statutes at Large, page 27;

U. S. Trust Company v. *New Mexico*, 183 U. S., 535;

Wilson v. *Merchants' Loan & Trust Company*, 183 U. S., 121;

Grayson v. *Lynch*, 163 U. S., 468.

II.

THE MATTER IN DISPUTE COMPLAINED OF BY APPELLANT UNDER THE JUDGMENT OF THE TERRITORIAL SUPREME COURT WAS LESS THAN FIVE THOUSAND DOLLARS, AND THIS COURT IS WITHOUT JURISDICTION.

See Sec. 702, U. S. Revised Statutes, as amended by the Act of March 3, 1885, Chapter 355;

Nagle v. *Rutledge*, 100 U. S., 675.

Wilson v. *Kiesel*, 164 U. S., 251.

III.

THE LEVY OF A SPECIAL TAX BY THE COUNTY COMMISSIONERS TO PAY JUDGMENTS AGAINST THE COUNTY, BASED UPON CLAIMS FOR GENERAL CURRENT EXPENSES OF THE COUNTY, IN EXCESS OF THE LIMIT OF TWO AND ONE-HALF MILLS FOR COUNTY CURRENT EXPENSES AND ONE-HALF OF ONE MILL FOR DEFICIT, WAS EXCESSIVE, UNAUTHORIZED AND ILLEGAL.

See Sec. 1, Chap. 2, pages 18 and 19, Laws of New Mexico, 1873-1874;

Chap. 1, Laws of New Mexico, 1875-1876, Sec. 7, page 19 and Sec. 14, pages 20 and 21;

Sec. 6, Chap. 62, page 11, Laws of New Mexico, 1882;

Sec. 2, Chap. 68, Laws of New Mexico, 1889, pages 141 and 142;

Commissioners of Osborne County v. *Blake,* 25 Kan., 356;

Supervisors v. *U. S.,* 18 Wall., 71;

G. I. & N. W. R. R. v. *Baker,* 45 Pac., 494, 502, 503;

State ex rel. Young v. *Royse et al.,* 91 N. W., 559;

C. & A. R. R. v. *People,* 177 Illinois, 91;

27 Am. and Eng. Encyc. of Law, 2nd Ed., page 877, note 4, and page 878;

Corbett et al. v. *City of Portland et al.,* 48 Pac. 428;

2 Desty on Taxation, page 1064.

IV.

A STATUTE CONFERRING AUTHORITY TO IMPOSE TAXES MUST BE STRICTLY CONSTRUED.

1 Desty on Taxation, page 257, and page 473.

ARGUMENT.

I.

AS THE TERRITORIAL SUPREME COURT MADE NO STATEMENT OF THE FACTS OF THE CASE IN THE NATULE OF A SPECIAL VERDICT, THE CASE HAVING BEEN TRIED IN THE DISTRICT COURT WITHOUT A JURY, THERE IS NOTHING FOR THIS COURT TO REVIEW ON APPEAL.

The case, although an action at law, having been tried by the District Court without a jury, the appellate jurisdiction of this court is invoked by appeal under Section 2 of the Act of April 7, 1874 (18 U. S. Statutes at Large, 27), but in that section it is provided that

"on appeal instead of the evidence at large a statement of the facts in the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree."

That provision requires the Supreme Court of the Territory to state the *ultimate* facts in the case, and if we are to assume that the Territorial Supreme Court accepted and adopted what purports to be in the record an agreed statement of facts, yet on examination we find such agreed statement to be a statement merely of evidentiary facts or matters, with various exhibits attached thereto, from which the court would have to determine the ultimate facts in the case,—those facts which it would be necessary to state in the pleadings as the basis of the cause of action or defense.

It was held by this court in *United States Trust Company* v. *New Mexico*, 183 U. S., 535, construing the above act of Congress, that an agreed statement of facts setting out evidentiary matter, and referring to exhibits similar to the ones in this case, even when adopted as its statement by the Territorial Supreme Court, was not a sufficient compliance with the above law and presented nothing for the examination of this court.

To the same effect see *Wilson* v. *Merchants' Loan and Trust Company*, 183 U. S., 121; *Grayson* v. *Lynch*, 163 U. S., 468.

Upon this ground the judgment of the territorial Supreme Court should be affirmed.

II.

AS THE MATTER IN DISPUTE ON THIS APPEAL UNDER THE JUDGMENT OF THE TERRITORIAL SUPREME COURT DID NOT EXCEED FIVE THOUSAND DOLLARS THIS COURT IS WITHOUT JURISDICTION.

Under Section 702 of the U. S. Revised Statutes, as amended by the Act of March 3, 1885, Chapter 355, the final judgments and decrees of the Supreme Court of New Mexico may be reviewed and reversed or affirmed in this court on writ of error or appeal in the same manner and under the same rule as the final decrees of a Circuit Court, but no appeal or writ of error shall be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of such territory "unless the matter in dispute exclusive of costs shall exceed the sum of five thousand dollars."

On October 9, 1902, the District Court of Grant County rendered its judgment in favor of appellant and against appellees for $5,156.71, with interest thereon at the rate of 6 per cent. per annum from the date of judgment, and costs of suit. In the above judgment there was included the claim of the county amounting to $276.21, with interest, on account of taxes arising from an increase in the valuation of defendants' property, payment of which was also resisted by defendant.

On February 26, 1903, four months and seventeen days after the rendition of the judgment in the District Court the Supreme Court sustained the judgment in respect to the claim for $276.21, as that claim was not then resisted by the railway companies, but declined to render judgment for the balance of the claim.

This left therefore as disputed at the date of the rendition of the judgment in the Supreme Court of the Territory only the claim of appellant under the judgment of the District Court for the balance, which amounted to $4,880.50 with 6 per cent. interest per annum thereon from October 9, 1902, until the date of the judgment of the Supreme Court, which would make the total claim then in dispute amount at most only to $4,991.93. The matter in dispute, therefore, exclusive of costs, as to appellant upon the rendition of the judgment of the Supreme Court which is complained of by it was less than $5,000.

The "matter in dispute" means the matter in dispute under or in respect to that part of the judgment of the Supreme Court which is claimed by the appellant to be erroneous. That part affirming the judgment of the District Court is not in dispute.

See ruling under the old statute when the jurisdiction depended upon the "matter in dispute" exceeding $1,000, in *Nagle* v. *Rutledge*, 100 U. S., 675. See, also, *Wilson* v. *Kiesel*, 164 U. S., 251.

Upon this ground the appeal should be dismissed for want of jurisdiction.

III.

THE LEVY OF A SPECIAL TAX BY THE COUNTY COMMISSIONERS TO PAY JUDGMENTS AGAINST THE COUNTY BASED UPON CLAIMS FOR GENERAL CURRENT EXPENSES OF THE COUNTY IN EXCESS OF THE LIMIT OF TWO AND ONE-HALF ($2\frac{1}{2}$) MILLS FOR COUNTY CURRENT EXPENSES, AND ONE-HALF ($\frac{1}{2}$) OF ONE MILL FOR DEFICIT, WAS EXCESSIVE, UNAUTHORIZED AND ILLEGAL.

It appears that the County Commissioners, in the years 1895, 1896 and 1897, attempted to levy a special tax to pay certain judgments against the county, which levy was in excess of two and one-half ($2\frac{1}{2}$) mills for county current expenses, and one-half ($\frac{1}{2}$) of one mill for deficit, and that the judgments rendered against the county were based upon claims for the current expenses of the county.

The Supreme Court determined that the County Commissioners in making such special levy exceeded their authority and the limit of the law in force at that time.

An examination of the New Mexico statutes then in force will clearly show that the decision is correct.

By an Act of the Territory, approved January 8, 1874, entitled "An Act amending the Revenue Laws

of the Territory of New Mexico" and which amended Section 6 of an Act approved January 31, 1872, and which provided for the assessment of property and the levying of taxes, it was provided in Section 1 as follows:

"That hereafter, all real estate situated in this territory and all personal property of residents of this territory, wherever the same may be, and all other personal property in this territory, on the first day of March of each year, excepting the value of five hundred dollars to each head of a family, resident in this territory, and also all the property excepted by articles two (2), three (3), four (4), five (5), six (6), and seven (7) of section three (3), of this (an) act providing means of revenue for the Territory of New Mexico, *shall be subject to an ad valorem tax of one per centum, upon each dollar of the value thereof,* which shall be assessed and collected as is now, or may hereafter be provided by law for the assessment and collection of taxes; *one-half thereof to be applied solely and exclusively for territorial purposes, one-fourth in like manner for county purposes, and the remaining one-fourth to be in like manner applied to school purposes, in the county where the same is collected.*"

(See Section 1, Chapter II, pages 18 and 19, Laws of New Mexico, 1873-1874.)

The above Act clearly gave authority to levy an ad valorem tax of only one per centum, one-fourth thereof, or two and one-half (2½) mills to be applied to county purposes.

At the session held in 1876 there was passed an Act approved January 13, 1876, entitled "An Act to provide for the establishment and election of County Commissioners." It contains forty-five sections, prescribing the powers and duties of counties and the various

officers thereof, the powers of the county to be exercised by a Board of County Commissioners.

Section 4 provides for suits by and against the county and its officers.

Section 5 provides for service of process in suits against the county.

Section 6 provides for the competency of witnesses and jurors in cases in which the county may be interested.

Section 7, which is relied upon by the county as giving authority to levy a special tax in excess of that authorized for county current expenses, reads:

"When a judgment shall be rendered against any Board of County Commissioners of any county, or against any county officer in an action prosecuted by or against him in his official name where the same shall be paid by the county, *no execution shall issue upon said judgment, but the same shall be levied and paid by tax as other county charges,* and *when so collected shall be paid by the county treasurer* to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor."

Section 14 of that Act provides, among other things,

"The Board of County Commissioners shall have power at any session. * * * Fourth, To apportion and order the collection of taxes by law. * * * Tenth, They shall also constitute Boards of Equalization of taxes to hear appeals from the action of the assessors who make the assessments; they shall revise the lists of assessments within their respective counties, and shall correct the same, and shall hear and determine all appeals of assessments that may be brought before them, as required by law, *and in no event shall the said commissioners levy any assessment of taxes exceeding one per cent.*"

(See Chapter I, Laws of New Mexico, 1875-1876, Sec-

tion 7, page 19, Section 14, pages 20 and 21,—being Section 338, page 278 and Section 345, page 282, of the Compiled Laws of New Mexico of 1884.)

It will be seen that the above law, which authorized the County Commissioners under Section 7 thereof to pay a judgment "by tax, *as other county charges,*" contained in Section 14 a limitation that no levy or assessment of taxes should be made in any event exceeding one per cent. Under the laws then in force, the Act of 1874 above quoted, such levy would have to be distributed one-half for territorial purposes, one-fourth for county purposes and one-fourth for school purposes, thus leaving judgments to be paid only out of the taxes levied for county purposes. That Act, however, was not on the subject of revenue, but was passed with reference to counties and county officers.

By an Act approved March 1, 1882, entitled, "An Act Defining a System of Revenue," elaborate provision was made in some one hundred and seventeen sections providing for the assessment of property, equalization and collection of taxes and sale of real estate sold for taxes, also license taxes, suits for collection of taxes and fees. In Section 6 of that Act it was provided:

"There shall be levied and assessed upon the taxable property within this territory in each year the following taxes:

For territorial revenue, one-half of one per cent.

For ordinary county revenue, one-fourth of one per cent.

For maintenance and support of public schools, one-fourth of one per cent." (See Section 6, Chapter LXII, page 111, Laws of New Mexico, 1882.)

This authority and the limitation thereof were in accordance with previous legislation.

The repealing clause of the above chapter (62) being Section 118 thereof, read:

"That the provisions of this Act shall be in full force and effect from and after its passage, and that all laws and parts of laws in conflict herewith are hereby repealed, and that all laws or parts of laws heretofore in force regarding the raising of revenue from taxation or from levies are by this Act hereby repealed."

As Chapter 62 was intended as a revision or codification of the revenue laws the effect upon previous revenue laws would have been the same without any special provision such as Section 118, above.

It was contended, however, in the lower court that Section 118 had the effect of repealing the limitation of 1 per cent. contained in Section 14 of the Act of January 13, 1876, concerning county commissioners. That limitation, however, was not in conflict with any provision of Chapter 62 of the Laws of 1882; moreover, the Act of 1876 was not an act or law relating to the raising of revenue but was rather a law relating to the powers and duties of county officers. If, however, Section 118, above, could be construed as showing an intention to repeal the limitation placed upon the power of county commissioners with reference to levying taxes in Section 14 of the Act of 1876 then it would also have the effect of repealing the provisions of Section 7 of that Act which authorized payment by tax, as other county charges, of the judgments against the county. In any event it would have no relevancy in showing the intention of the legislature in enacting

Section 7 of the law of 1876, if it should appear from the provisions of that law as construed in the light of other laws *then* in force that the legislature did not intend by said Section 7 to authorize the county commissioners to levy a special tax to pay judgments in excess of the levy authorized for county purposes or county current expenses.

At the same session, but by an Act approved earlier, to-wit, February 10, 1882, entitled, "An Act to Provide for Funding the Indebtedness of Counties," provision was made authorizing county commissioners to issue bonds in exchange for warrants, providing for the payment of interest and coupons and the levying of taxes to meet the interest and principal when due, providing for the registering of warrants issued prior to July 1, 1882, and funding the same, and providing for the registering of bonds, and providing for a sinking fund for the payment of bonds.

Section 1 authorized the county commissioners to issue bonds in exchange for the outstanding warrants thereof.

Section 3 provided for the levying of a tax sufficient to meet the amount of interest and principal within the year next succeeding, which was to be kept separate from levies for other county purposes and was payable in money or overdue coupons or overdue bonds.

Section 4 provided that

"at any time after the passage of the Act the holder of any warrants of any county heretofore issued by the county commissioners at any time after the first day of July, 1882, the holder of any warrants of any county issued between the passage of this Act and the first day of July, 1882, amounting to one hundred dol-

lars or more, may apply to the Probate Court of such county for bonds of the kind hereinbefore described in exchange for such warrants and the interest accrued thereon, and it shall thereupon become the duty of the county commissioners to issue bonds as aforesaid and deliver the same to the holder of such warrants, * * * but nothing herein contained shall authorize the funding of any indebtedness accruing after July 1, 1882." (See Chapter LXV, pages 136 and 137, Laws of New Mexico of 1882.)

A similar provision was made in the laws of 1884, Chapter LXI, Sections 1 and 5.

By an Act approved February 19, 1889, entitled "An Act to Authorize the Funding of County Indebtedness and for Other Purposes," county commissioners were authorized to issue certain bonds for the outstanding indebtedness of counties, as evidenced by warrants or bonds of such counties which had accrued or might accrue up to the first day of July, 1889.

Section 2 provided as follows:

"In order to enable the county commissioners *to place the finances of any county upon a cash basis*, such county commissioners are hereby authorized to issue coupon bonds such as are provided for by this Act from time to time after the first day of July, A. D. 1889, to meet the current expenses of the county. Such bonds to be issued at such times and in such quantities as in the judgment of said commissioners may be expedient and the same shall be sold or exchanged for cash at a discount of not more than five per cent. on their par or face value; provided, that no bonds shall be issued or sold by virtue of this section after the first day of January, 1890, and if any should be issued after such date they shall be void, *and no warrant shall be issued after the first day of January, A. D. 1890, unless there be enough money in the county treasury for all county purposes sufficient to meet the same.* And hereafter all taxes annually levied for county purposes shall be ap-

propriated and used exclusively to meet and pay the current expenses of the county for the year succeeding that in which such taxes have been levied to the extent that such taxes have been collected prior to, and during said last mentioned year; provided, that all delinquent taxes of preceding years shall be applied when collected, to pay the current expenses of the county as they may accrue; provided, further, that *if at any time the taxes collected during any year, shall not be sufficient to meet the current expenses of such county for the succeeding year then it shall be lawful at the next annual levy of taxes, for the county commissioners of such county, to make an additional levy not to exceed one-half of one mill on each dollar of taxable property in such county, for the purpose of making up such deficit in the current expense of such county.*"

Section 7 of the same Act makes it the duty of county commissioners issuing bonds under the Act, to levy each year at the time of making the levy of other taxes, a tax sufficient in amount, and no more, to pay the interest on said bond or bonds, warrant or warrants for each year, such tax to be kept separate from the taxes levied for other county purposes, and shall be payable in money, and shall be devoted exclusively to the payment of such interest.

In Section 11 it was provided:

"The provisions of this Act shall not apply to such part of the indebtedness of any county, incurred or created after July 30, A. D. 1886, as was in excess of four per centum of the value of the taxable property within such county, according to the last assessment made previous to the incurring and creating of such indebtedness, which said excess of indebtednes shall be void." (See Chapter 68, Section 2, pages 141, 142; Section 7, page 144, and Section 11, pages 145 and 146, Laws of New Mexico, 1889.)

The above Act was intended to put the counties upon

a cash basis, to forbid the issuance of warrants except as against funds on hand and to authorize an additional levy not to exceed one-half of one mill over the levy authorized for ordinary county purposes or its current expenses, where a deficit should accrue in any year in the meeting of such current expenses of the county.

The foregoing are all of the statutes called to the attention of the lower court and all that need be considered in this case.

It is contended that Section 7, heretofore set out, of the Act of January 13, 1876, entitled "An Act to provide for the establishment and election of county commissioners," gave authority to the county commissioners to levy a special tax to pay judgments in excess of what they were authorized to levy for county current expenses. That, however, was not the intention of the legislature, as can be clearly shown.

Section 7 follows certain provisions respecting suits against counties and county officers. It was simply intended to provide that, when judgment was rendered against the board of county commissioners or some officers, where the same was to be paid by the county, such judgment should not be collected by execution, but that it should be "paid by tax, *as other county charges,*" that is to say, it should be paid out of the taxes levied for the payment of county charges, which would, of course, be by a tax levied at a limited or prescribed rate, as other county charges would be paid by that tax.

That it was not intended by the legislature to authorize the county commissioners to levy a special tax to pay judgments in excess of the amount they were au-

thorized to levy for county charges is apparent not only from the language of Section 7, but also from the limitation contained in Section 14 of the same statute, which then prohibited county commissioners from levying any assessment of taxes exceeding 1 per cent.

Section 7 is of course to be construed in the light of other provisions in the same statute and the legislation then in force.

Under the law of 1874 which was *then* in force county commissioners were authorized to levy an *ad valorem* tax of 1 per cent., one-half thereof to be applied solely for territorial purposes, one-fourth for school purposes, thus leaving only one-fourth in any event for all county purposes, including the payment of judgments against the county.

Authority to levy a special tax to pay judgments was not specifically given and if a tax should have been levied in excess of two and one-half mills for county purposes in order to pay judgments against the county, clearly the limitation contained in Section 14 of that law would have been exceeded and violated. It is not to be assumed, therefore, that the legislature intended to give by implication an authority which would have resulted in exceeding the limit of levy for all taxes prescribed in Section 14 of the same Act. Subsequent laws authorized the funding of certain indebtedness against the county, and provision was made for the payment of interest and a sinking fund, as heretofore stated. A judgment rendered upon the bonds or coupons issued thereunder would, of course, be collected by the levy authorized therein for the payment of such interest coupons or bonds.

The foregoing legislation, however, showed an effort on the part of the legislature to restrict the creation of indebtedness on the part of the county, and the Congressional Act of 1886, known as the Harrison Act (Section 4, Chapter 818, 24 U. S. Stat. at Large, 171), fixed a further limitation on the creation of indebtedness by counties in the territories. By limiting and prescribing the powers of counties to levy taxes the legislature clearly attempted in this manner to place some restriction upon or hinderance to the creation of county indebtedness, so as to relieve as much as possible the burdens of the taxpayers.

A tax is a forced contribution, and the power of subordinate bodies to levy the same has always been strictly construed. Power to levy a tax at a fixed rate is exhausted when the limit of the rate is reached.

In 1 Desty on Taxation, page 257, it is said:

"A statute conferring authority to impose taxes must be strictly construed. A strict construction is fully authorized by the nature and consequences of the proceedings and every charge under the act must be imposed by clear and unambiguous words."

In 1 Desty on Taxation, page 473, it is said:

"The grant of power to subordinate bodies to impose taxes must be strictly construed and doubtful questions as to the extent of the power must be decided against it."

In 2 Desty on Taxation, page 1064, it is said:

"County purposes are such charges in the way of expenditures as are fixed by law upon the counties and appertain to the general administration of county affairs. 'County charges' and 'current expenses' mean substantially the same thing."

If it were permissible, under the general language of

Section 7 of the law of 1876 to levy a tax in excess of that authorized for county purposes and for the deficit in meeting current expenses provided for by the law of 1884, it would be an easy matter for county commissioners to impose very heavy burdens in the way of taxation on taxpayers by extravagant administration of public affairs, and parties contracting with the county commissioners would feel under no restraint whatever, as they could very readily have their claims reduced to judgments and paid by special tax, whereas if the claims were not reduced to judgments they would have to abide payment, as other county charges.

A similar provision in regard to payment of judgments by taxation "as other county charges" has been construed by other courts. A provision of a Kansas statute concerning county commissioners, in identical language with that used in Section 7, was considered by the Supreme Court of Kansas in *Comm'rs of Osborne Co.* v. *Blake*, 25 Kansas, 356. But it was there held that such provision was intended to obviate collection by execution and merely to provide that the judgment should be collected by means of a tax in the same manner as other county charges are collected, and that other county charges when collected by means of a tax can be collected only by means of a limited tax which was prescribed in the authority to levy taxes for such purposes.

It was further decided in that case that a judgment rendered upon a claim against a county was simply one of the items which the board of commissioners take into consideration in levying a tax for county charges or for county expenses or for current expenses; and that a judgment rendered upon a claim for county

charges could only be paid out of a tax which the commissioners were authorized to levy to pay such charges.

This court, in the case of *Supervisors* v. *United States*, 18 Wall., 71, construing a statute of Iowa which provided that in case of judgment against a county if the municipality issue no scrip or evidence of debt to cover the same "a tax must be levied as early as practicable, sufficient to pay off the judgment with interest and costs," held, following the decisions of the state court, that this gave no authority to levy a special tax for that purpose, nor did it grant a new power to levy a tax for the payment of ordinary county indebtedness, even though the indebtedness had been reduced to judgment.

A provision in the Wyoming statutes concerning judgments against counties, similar to that of section 7 of the law of 1876, was considered by the Supreme Court of that state, in *Grand Island & N. W. R. R.* v. *Baker*, 45 Pac., 494, and on pages 502 and 503 the court held that such provision gave no authority to levy a special tax, but that such judgments were to be paid as other county charges and out of the tax authorized to be levied for such purposes only.

In *State ex rel. Young* v. *Royse et al.*, 91 N. W., 559, the Supreme Court of Nebraska held that in determining the power of a city to levy taxes to pay judgments against the city, the judgments partake of the character and are governed by the same rules of limitation as the original claims upon which they are based.

In *C. & A. R. R. Co.* v. *People*, 177 Illinois, 91, it was held that upon making the annual tax levy for corporate purposes, including the payment of a judgment

not on a bonded debt, the other expenses must be abated, if necessary, to bring the entire levy within the statutory limitation.

See, also,

27 Am. and Eng. Encyc. of Law, 2nd Ed., page 877, note 4, and page 878.

Corbett et al. v. *City of Portland et al.*, 48 Pac., 428 (Supreme Court of Oregon).

It was contended in the lower court that no inquiry could be made into the nature of the claims upon which the judgments were based; that the judgments were conclusive. No doubt they are conclusive, so far as their validity is concerned, but an inquiry into the nature of the claim upon which the judgment was based is not an attack upon the judgment, especially when the inquiry raises a question as to whether a special tax might be levied, or not, to pay such judgment. If the judgment be founded upon a bond of the county or an interest coupon issued under authority of law the holder thereof may compel the levying of a tax which was authorized by the statute authorizing the issue of the bonds, as the right to such tax becomes a part of the contract. There the court would inquire into the nature of the claim upon which the judgment was rendered. A judgment is an adjudication of the validity of the claim, but the claim is set out in the pleadings and is as much a part of the record as the judgment itself.

In 1 Freeman on Judgments, Section 244, it is stated that:

"While as a general rule the cause of action is merged in the judgment yet all inquiry into the nature of the cause of action is not barred by the judgment.

In order to determine whether the judgment is of such a character as to enable it to be enforced in a particular manner inquiry may be made as to the nature of the claim upon which it was founded."

See also *Louisiana* v. *Mayor of New Orleans*, 109 U. S., 285, in which it was held that a judgment against a municipality founded upon a tort did not come within the protecting clause of the Federal Constitution prohibiting the states from passing laws impairing the obligations of contracts.

It was also contended in the lower court that some of the claims upon which these judgments were rendered were of the sort made compulsory by operation of law and were of an extraordinary nature. Some of the claims merged in these judgments were for the payment of election and jail expenses, salaries and fees to county officers. They were nevertheless current or ordinary county expenses and their legal status was not changed although such claims were merged into judgments. Notwithstanding the necessity to meet such charges the authority to levy taxes to pay the same could not be exceeded.

Lake County v. *Rollins*, 130 U. S., 662, 669, overruling the views entertained by the court below in 34 Fed., 845.

We respectfully submit the judgment of the Supreme Court of the Territory should be affirmed.

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